

June 21, 2007

Mark Holsten, Commissioner
Minnesota Dept. of Natural Resources
500 Lafayette Road
St. Paul, MN 55155

Re: In the Matter of the Appeals of the Trespass Citations Issued to
Nicholas John Marshall and Jeremiah Joseph Marshall (Juveniles)
Citation Numbers 39551 and 39552
OAH Numbers 7-2000-17757-2 and 7-2000-17758-2

Dear Commissioner Holsten:

On May 29, 2007, a Prehearing Conference was held in this matter by telephone. Joe Marshall, father of Nicholas John Marshall and Jeremiah Joseph Marshall, juveniles, and Conservation Officer Karl Hadrits participated. During the Prehearing Conference, the parties agreed to submit the matter to me for decision without further hearing in order to resolve the matter, and they each affirmed that the facts as stated to me were true. They are as follows:

On November 5, 2006, during the first week of the deer-hunting season, Nicholas Marshall and Jeremiah Marshall were hunting deer with their father, Joe Marshall, in Center Township, Crow Wing County. The party was hunting near the intersection of Antler Road and Half Moon Landing Road. Joe Marshall had hunted and guided hunters in this area in the past. Mr. Marshall was aware that the land had been posted, but he believed that at least some of the land abutting Half Moon Landing was owned by the State of Minnesota.

Nicholas and Jeremiah left their father and walked down Half Moon Landing Road. A trail branched off to the left. A "No Trespass, No Hunting" sign was posted a short distance down the trail facing Half Moon Landing Road. The boys saw a deer cross the road from right to left and stop just off the left hand side of the road.¹ The deer was shot. It went a short distance and collapsed near the "No Trespass" sign.²

Dave Elstrom leases approximately 240 acres from Northwest Paper Company land. Northwest Paper Company owns land on both sides of Half Moon Landing Road. Dave Elstrom heard a shot and went to investigate. He found Nicholas and Jeremiah Marshall. Mr. Elstrom telephoned a DNR officer to complain about hunting on his land.

Conservation Officer Hadrits, who investigated the matter, spoke with the Marshalls and Elstrom. Jeremiah and Nicholas freely admitted that they had seen the signs. After concluding his investigation, Officer Hadrits issued civil trespass citations to Nicholas and Jeremiah Marshall for trespassing on Elstrom's leased property.

Minn. Stat. § 97B.001, subd. 4, provides as follows: "... A person may not enter, for outdoor recreation purposes, any land that is posted under this subdivision without first obtaining permission of the owner, occupant, or lessee."

Joe Marshall was very candid during the hearing. He stated that the land was posted. He said that any mistake was his and should not be held against his sons. But the land was clearly posted. The deer was shot only a few feet away from a sign. In this case, the trespass was unintentional, but Nicholas and Jeremiah Marshall nevertheless did violate the law, and I must recommend that the citations be AFFIRMED.

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. Nicholas and Jeremiah Marshall may, within those five days, comment to the Commissioner, and the Commissioner must consider the comments. Once the Commissioner has made a final decision, a copy of that decision must be served upon Nicholas and Jeremiah Marshall and the Administrative Law Judge. The final order of the Commissioner may be appealed.³ If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2. The record closes upon the filing of exceptions to the report, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

I am closing our files in this matter, and returning the records to you.

RCL:mo

Very truly yours,

/s/ Richard C. Luis

cc: Jeremiah Marshall
Nicholas Marshall
Joseph Marshall
Officer Karl Hadrits
Pat Watts, DNR

RICHARD C. LUIS
Administrative Law Judge

Telephone: (612) 349-2542

¹ Photograph 10.

² Photograph 11.

³ See Minn. Stat. §§ 14.63 to 14.69.